IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

CRP.No. 349 of 2000(I)

SMP.6/1982 of TALUK LAND BOARD, PERINTALMANNA
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REVN. PETITIONER:

V.K. PADMAVATHY,
KOZHITHODI HOUSE,
KADUNGAPURAM P.O.
VIA. ANGADIPPURAM,
MALAPPURAM DISTRICT.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
ADV. B.S. SWATHI KUMAR.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHPAURAM.**

2. **THE TALUK LAND BOARD, PERINTHALMANNA.**

3. **U.P. BHASKARAN NAIR, KOZHITHODI HOUSE, KADUNGAPURAM P.O. VIA. ANGADIPPURAM, MALAPPURAM DISTRICT.**

R3 BY ADV. SRI.T.R.HARIKUMAR
R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.T.K. MOHANAN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO. 695/00 IN CRP 349/010

DISMISSED

9/4/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 349 OF 2000

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Dated this the 9th day of April, 2007.

O R D E R

This revision is preferred against the order of the Taluk Land Board, Perinthalmanna in a ceiling case initiated against one Bhaskaran Nair. The present revision petitioner is the wife of the said Bhaskaran Nair. The Taluk Land Board initiated the case on the basis that Mr.Bhaskaran Nair was an adult unmarried person and under the provisions of the K.L.R. Act he is only entitled to hold land which can be enjoyed by a person under section 82 of the K.L.R. Act. The Land Board fixed the ceiling limit at 7.50 acres and issued notice to the declarant. On appearance the declarant filed a statement to the effect that she had married the present revision petitioner V.K. Padmavathy on 20-3-69 and they had a minor child as on 1.1.70. The Taluk Land Board did not accept that contention. Against the same the declarant moved C.R.P.1350/83 and this Court dismissed the revision petition on the ground that the declarant had failed to produce evidence to prove his claim and therefore the order is not revisable under section 103 of the K.L.R. Act. Thereafter, a petition

is filed by the revision petitioner u/s 85(8) of the K.L.R. Act for adjudicating the right claiming that she is the legally wedded wife of Mr.Bhaskaran Nair and that the marriage has taken place prior to 1.1.70 and that she is a member of the statutory family envisaged under the provisions of the K.L.R. Act. The Taluk Land Board rejected the case of the revision petitioner holding that she is not entitled to maintain the plea u/s 85(8) and therefore dismissed the claim. It is against that decision the present revision is filed. The learned senior counsel appearing for the civil revision petitioner strongly contends before me that the revision petitioner is entitled to file an application u/s 85(8) being a member of the statutory family and an order passed behind her has no force in the eye of law. Therefore, the application u/s 85(8) is perfectly maintainable.

2. On the other hand, the learned Government Pleader would contend that the declarant having failed to establish the factum of the status as on 1.1.70 is attempting to raise these contentions through the back door and claim benefit which she is really not entitled to. The learned senior counsel had brought to my notice the decision of this Court reported in **Velayudhan v. State of Kerala 1981 KLT 696**. It was a case where the ceiling case was initiated holding that the property belong to the mother. The major

son moved an application u/s 85(8) holding that the property belong to the father of him and it is a family property and therefore this claim has to be adjudicated. Or in other words, he claims to be a co-owner of the property and therefore wanted to adjudicate the claim. It was contended before this Court that only strangers can apply u/s 85(8) of the Act and the major son being a member of the family is not entitled to put forth the said contention. This Court held that he is a person who is having interest in the property and who is having a claim or right in the property and therefore even though the person who applies is a member of the family is not debarred from applying u/s 85(8) of the act. But so far as this case is concerned, it has to be held that status of a person is an important issue that has to be adjudicated at the preliminary stage itself and the husband of the revision petitioner namely Bhaskaran Nair had taken up the said contention and failed to prove the same and it was confirmed by the High Court for lack of evidence in the matter. So as far as this status of Bhaskaran Nair is concerned it has become conclusive by virtue of the decision of this Court in the C.R.P. But, thereafter, the wife files an application u/s 85(8) to get at the property by attempting to prove the status. The learned judge of this Court has clearly stated in paragraph 9 of the judgment that "any person having a right or

claim in land is a person interested in land". S.85(8) of the K.L.R. Act clearly states that a petition is maintainable when a person is interested in the land applies. So, in order to have interest in the property the person applying must have a right or claim in the land. As far as the wife is concerned she does not have the right or claim in the property belonging to the husband during the subsistence of the marriage. Therefore, one cannot hold that she is a person interested in land. When it is so S.85(8) does not apply and the decision of the Taluk Land Board that she is not entitled to maintain an application u/s 85(8) appears to be correct and it does not suffer from any illegality or irregularity which requires interference by this Court u/s 103 of the K.L.R. Act. Therefore, the revision lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. NO. 349 OF 2000

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O R D E R

9th April, 2007.